IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 705 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

VISANJI RAMJI THAKKAR (VENDER)

Appearance:

Mr.Hansa Punani, APP for the appellant

MR YOGESH S LAKHANI for Respondent No. 1

MR VIJAY H PATEL for Respondent No. 4, 6, 7, 8

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/02/2001

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of Criminal Procedure, the State of Gujarat has challenged

judgment and order dated March 9, 1990 passed by the learned Judicial Magistrate, First Class, Gandhidham, in Criminal Case No.2287 of 1985, by which, the respondents came to be acquitted for the offences punishable under Sections 16(1)(a)(i), 16(1A), read with 2(i)(e) to (l) read with Section 7 of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The prosecution case, in short, be summarized as under: Food Inspector, Mr.J.M.Tekwani, of Gandhidham Municipality, inspected the shop of M/s. Vishanji Ramji Thakkar, situated at Gandhidham, and collected samples of 'broken grains of rice'. The Food Inspector had kept one Ramesh Ghanshyamdas Hemdani as panch witness at the time of inspection and collection of sample of 'broken grains of rice'. The said samples were filled in three clean and dry bottles and, after following the usual procedure as prescribed under the Act and the Prevention of Food Adulteration Rules, 1955 ('Rules' for short), the Food Inspector had forwarded one sample to the Public Analyst. On receipt of the report of the Public Analyst, which indicated that the sample did not conform to the standard prescribed under the Act and the Rules, the Food Inspector lodged a complaint against the respondents who are vendors and manufacturers of rice, in the Court of learned Judicial Magistrate, First Class, Gandhidham, for the offences stated hereinabove, which came to be numbered as Criminal Case No.2287 of 1985.

3. The record indicated that, when the summons of the criminal case were served on the respondents, they made an application requesting the Court to send sample to the Central Food Laboratory for analysis. Accordingly, the sample was sent to the Central Food Laboratory for analysis. The report of the Central Food Laboratory also indicated that the sample did not conform to the standard prescribed under the Act and the Rules. Unfortunately, even though the report of the Central Food Laboratory was produced on the record of the case, the learned Magistrate had not exhibited the same.

4. To prove the case against the respondents, the Food Inspector, Mr. J.M. Tekwani, was examined at Exh.35. After recording of the evidence of the Food Inspector, the learned Magistrate framed charge at Exh.80 against the respondents for the abovementioned offences. The charge was read over and explained to the respondents wherein they had pleaded not guilty and claimed to be tried. After framing of the charge, panch, Ramesh Hemchandhani, was examined at Exh.100. No other oral evidence was led by the prosecution. However, the

prosecution produced voluminous documentary evidence consisting of the complaint, panchanama, report of the Public Analyst, report of the Central Food Laboratory, etc. to prove the charges against the respondents.

5. The learned Magistrate, on appreciation of oral and documentary evidence, concluded that (i) sanction to prosecute the respondents granted under Section 20 of the Act was not legal and valid; (i) the Food Inspector had not added preservatives in the sample of food collected from the shop of respondent No.1; and (iii) there was violation of Rule 16(c) of the Rules. On the basis of the abovereferred to conclusion, the learned Magistrate acquitted the respondents from the charges framed against them, which has given rise to filing of this appeal by the State of Gujarat.

6. Learned Additional Public Prosecutor, Ms. Hansa Punani, and learned advocate Mr. Y.S. Lakhani, have taken me through the entire record and proceedings produced at the trial.

7. Learned Additional Public Prosecutor has strenuously urged that the sanction to launch the prosecution against the respondents accorded by the Local Authority was legal and valid as per decision of the Supreme Court in the case of Suresh H. Rajpur & others vs. Bhartiben Pravinbhai Soni & others, reported in (1996) 7 Supreme Court Cases p.199. The learned advocate for the respondents does not dispute this legal position and, therefore, the finding of the learned Chief Judicial Magistrate that there was no valid sanction deserves to be quashed and set aside.

8. Without entering into the questions whether preservatives are added or not and whether there was violation of Rule 16 of the Rules, it may be mentioned that, while sending the sample to the Central Food Laboratory, there was clear violation of Rules 11(1)(b) and 13(2)(b) read with Rules 4(2) and 4(3) of the Rules, inasmuch as the duty is cast on the Court to ascertain that mark and seal or fastening as provided in Section 11(1)(b) are intact and the signature or thumb impression as the case may be is not tampered with. After satisfying the above requirement, the Court has to apply its own seal before forwarding the sample to the Central Food Laboratory. In the present case, there was no material on record to indicate whether the Court had forwarded the sample under its own seal to the Central Food Laboratory. Hence, in my opinion, the mandatory provisions of Section 13(2) read with Rule 4(3) were

violated. Learned single Judge of this Court, in the case of State of Gujarat vs. Bhupendra M. Mehta, reported in 2000 (1) G.L.H.679, has taken the similar view. In the present case, even though the sample was sent to the Central Food Laboratory on the application filed by the respondents, the learned Magistrate has not taken pains to see whether the provisions contained in Section 13(2) of the Act read with Rule 4(3) of the Rules were followed or not. In view of the decision of this Court in the case of Bhupendra M.Mehta (supra), as there was breach of mandatory provision of Rule 13(2) read with Rule 4(1)(a) of the Rules, the prosecution case is liable to fail.

9. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated March 9, 1990 passed by the learned Judicial Magistrate, First Class, Gandhidham, in Criminal Case No.2287 of 1985, is confirmed.

February 7, 2001 (M.H.Kadri, J.)
(swamy)